

STATE OF MAINE  
SUPREME JUDICIAL COURT  
AMENDMENT TO  
MAINE RULES OF UNIFIED CRIMINAL PROCEDURE

**2015 Me. Rules 20**

Effective: October 19, 2015

All of the Justices concurring therein, the following amendment to the Maine Rules of Unified Criminal Procedure is adopted to be effective on the date indicated above. The specific amendment is stated below. To aid in understanding of the amendment, an Advisory Note appears after the text of the amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 43A of the Maine Rules of Unified Criminal Procedure is adopted to read as follows:

**RULE 43A. PHYSICAL RESTRAINT OF JUVENILES**

**(a) Physical restraints in a courtroom prohibited absent court order.** Physical restraints shall not be used on a juvenile in a courtroom except when ordered by the court prior to or during the juvenile's appearance in the courtroom in accordance with this Rule.

**(b) Determination by the court.** If the transporting agency, the judicial marshal, other designated court security officer, or the State requests that physical restraints be used on a juvenile in the courtroom, the court shall be notified of that request. Upon such request, the court shall ensure that the juvenile, the juvenile's attorney, and the State are informed of the request. Additionally, prior to or during a proceeding, with similar disclosure to the parties present, and based on an individualized assessment of the particular juvenile and the available security resources, the court on its own motion may make a preliminary determination that one or more of the grounds for use of physical restraints listed in subsection (c) exists. If the juvenile or attorney for the juvenile objects, the court shall, whenever practical, provide the juvenile or the juvenile's attorney with an opportunity to state the basis of the objection before the court renders a decision on the use of restraints.

The court may order the use of physical restraints on a juvenile in the courtroom only if, based on an individualized assessment of the particular juvenile and the available security resources, it determines that:

(1) One or more of the grounds for use of physical restraints set out in subsection (c) exists; and

(2) There are no less restrictive alternatives reasonably available to maintain order and safety in the courtroom, or to prevent the risk of flight.

**(c) Grounds for use of physical restraints.** The following are grounds for the use of physical restraints in the courtroom:

(1) The present behavior of the juvenile creates a current and substantial threat to the juvenile's safety or to the safety of others in the courtroom, or that it creates a substantial risk of flight; or

(2) The juvenile's past behavior, including but not limited to behavior and conduct in a courtroom, creates a current and substantial risk that the juvenile will threaten the juvenile's safety or the safety of others in the courtroom, or that creates a substantial risk of flight.

**(d) Findings.** If the use of physical restraints is ordered over the objection of the juvenile, the court shall make findings of fact on the record in support of the order.

### **Advisory Note – October 2015**

Rule 43A is enacted to clarify the procedures and standards applicable when a request has been made to physically restrain a juvenile appearing before the court in a proceeding pursuant to the Maine Juvenile Code. Federal law recognizes the constitutional due process right of an adult defendant in a criminal jury proceeding to appear in court without physical restraints unless the judge has made an individualized determination that special circumstances justify use of those restraints. *See, e.g., Deck v. Missouri*, 544 U.S. 622, 629-32 (2005). The interests of the juvenile in appearing without restraints and the authority of the court to promote safety for all concerned in juvenile proceedings have not been extensively addressed by federal or state courts.

Through this Rule, Maine joins a growing number of states in recognizing that the best practice in juvenile proceedings is to avoid the use of physical restraints when it can be done without compromising the safety of the juvenile or others in the courtroom, and without creating a risk of flight.

2. This amendment shall be effective on November 1, 2015.

Dated: October 15, 2015

FOR THE COURT\*

/s/

LEIGH I. SAUFLEY

Chief Justice

DONALD G. ALEXANDER

ANDREW M. MEAD

ELLEN A. GORMAN

JOSEPH M. JABAR

JEFFREY L. HJELM

THOMAS E. HUMPHREY

Associate Justices

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\* This Rule Amendment Order was approved after conference of the Court, all Justices concurring therein.